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the defendants and the Northern road, should constitute a delivery from one to the other. It is sufficient to say, that they all tend to confirm, rather than to rebut, the inference drawn from the original construction of the depot and platform, and the uniform practice and usage respecting their use.

A new trial must be advised.

In this opinion the other judges concurred, except PARK, J., who, having tried the case in the court below, did not sit.

The propositions maintained in the foregoing case are so obvious and so well established, that very little comment is required. The question of what shall amount, practically and legally, to a delivery to the next carrier upon the route, is one of importance, and this case affords another illustration of the application of familiar principles, and is therefore important to the profession.

I. F. R.

District Court of Appeals of Virginia. First Judicial District.

EDGAR TUCKER *v.* WATSON, McGILL & CO.

Commercial intercourse between parties in the Northern and Southern states during the late rebellion having been prohibited, both by the general rules of public law, and expressly by the Act of Congress of 13th July 1861 and the President's proclamation in pursuance thereof, interest was suspended on debts due by persons in the territory of either belligerent to persons in the territory of the other.

Nor did such a debt begin to bear interest by reason of the presence of the creditor at the residence of the debtor and his demand for payment, unless he had abandoned his residence in the hostile territory and taken such measures as the rules and policy of the debtor's government prescribed to change his status as an enemy.

THIS was an action of *assumpsit*, by Watson, McGill & Co., of Petersburg, Va., who are defendants in error, against Tucker, Whitin & Carere, in the Circuit Court. Tucker, the plaintiff in error, was the only one of the defendants served. Upon the trial the case was withdrawn from the jury and submitted to the court on a statement of facts agreed upon by counsel, as follows: "For several years previous to the year 1861, the plaintiffs, who were manufacturers of tobacco in Petersburg, Va., were in the habit (at the special instance and request of the defendants) of sending to the defendants, who were commission merchants in the city of

Boston, in the state of Massachusetts, their manufactured tobacco for sale upon commission, and drawing drafts upon them, the said defendants, for the proceeds of the sales of said tobacco, after sales had been effected. That in consequence of such transactions, the defendants, on the 11th day of October 1861, were indebted to the plaintiffs in the sum of $2802.95, the balance due on that day as per account current rendered to the plaintiffs by the defendants. On the 1st day of August 1865, the defendants paid the plaintiffs the sum of $300, and on the 14th day of September 1865, the further sum of $2502.95, making together the aforesaid principal sum of $2802.95 due on the 18th of October, 1861, as aforesaid. The legal rate of interest in the state of Massachusetts is six per centum per annum. The defendants refused to allow and pay to the plaintiffs any interest whatever upon said principal balance of $2802.95, and still refuse to pay them interest thereon except from and after the 1st day of May 1865, which day is assumed as the end of the late war. The plaintiffs insisted, and still insist, that they are entitled to demand and receive interest on said balance of $2802.95 from the 16th day of October 1861, when it was due and payable, till paid, and that the aforesaid payment of $300 and $2502.95 shall be credited against said balance of principal and the interest thereon, as payments made 1st August 1865 and 14th September 1865, respectively.

"It is also agreed that the said defendants, during the whole time since 16th October 1861, were and have been solvent merchants and traders, able to pay the aforesaid balance and interest. It is also further agreed that in the fall of the year 1861, John McGill, one of the plaintiffs, was in Canada and in the city of Boston; that on the 4th and 18th days of September 1861, by letters from Canada, and about the 1st October 1861, in person in Boston, said McGill applied to defendants for payment of the aforesaid balance due by them to the plaintiffs, which payment the defendants refused to make, upon the ground that the President's proclamation of the 16th August 1861 made it unlawful for them to make such payments. And in July 1863 and December 1863 the plaintiff McGill was again in Canada, and again applied to defendants for payment of said balance, which was again refused upon the same ground.

"If, upon the foregoing statement of facts, the court shall be of

opinion that the defendants are not legally bound to pay to the plaintiffs interest upon said balance during the war, from the time it was ascertained to be due, to wit, the 16th October 1865, till paid, then judgment shall be given for the plaintiffs only for such a sum of money as is equivalent to the interest which accrued from and after the 1st day of May 1865, to wit, for the sum of $61.12, with interest thereon from the 14th day of September 1865 till paid. But if the court shall be of opinion that the defendants are legally bound to pay the interest aforesaid accrued upon the balance aforesaid during the war, then judgment shall be given for the plaintiffs for the sum of $657.75, with interest thereon from the 14th day of September 1865 till paid."

Upon this case the Circuit Court gave judgment for the plaintiffs for $657.75, with interest from 14th September 1865, and thereupon the defendants appealed.

R. R. Collier, for plaintiff in error.

John Lyon, for defendants in error.

The opinion of the court was delivered by

JOYNES, P. J.—The only question submitted by the case agreed was the right of the defendants in error to recover interest for the period of the late war. The Circuit Court was of opinion that, upon the facts agreed, the defendants in error were entitled to recover interest for that period, and gave judgment accordingly. The correctness of this judgment is now controverted by the plaintiff in error, on the ground that he and his partners resided in the state of Massachusetts, while the defendants in error resided in the state of Virginia, during the war, and that interest did not run during the war, where the debtor and creditor resided respectively within the territories of the opposing belligerents.

It is contended, however, by the counsel for the defendants in error, that it does not appear, from the case agreed, that the parties resided respectively in Massachusetts and Virginia during the war, and that, as the right of the defendants in error to recover interest during that period is not controverted on any other ground than that above mentioned, the judgment ought to be affirmed.

It is stated, among the facts agreed, that the defendants in error were, for several years previous to the year 1861, "manufacturers of tobacco in Petersburg, Va.," "and that the defend-

ants," meaning the plaintiff in error and his partners, "were commission merchants in the city of Boston, in the state of Massachusetts."

In ascertaining the meaning of this agreement, we must not apply any strict rules of verbal criticism, but must read it in the plain and ordinary sense of the language in which it is expressed: *Birch* v. *Alexander*, 1 Wash. 34. Though it is not stated, in so many words, that the parties resided respectively in Boston and Petersburg, yet such is the "evident implication" from the language. When it is said that a man is a clergyman, a physician, a lawyer, or a merchant, in a particular city, the common use of language leads us to understand, in the absence of anything to the contrary, that he is a resident of that city, engaged there in the calling specified. There is nothing in this case to indicate that the parties did not reside in Petersburg and Boston, respectively.

It appearing, then, from the facts agreed, that the parties, previous to the year 1861, resided respectively in the states of Massachusetts and Virginia, the presumption is, that they continued to do so after that time, in the absence of any proof to the contrary: Starkie's Evidence (ed. 1860) p. 76. There is nothing in the case to indicate that any one of the parties changed his residence in the year 1861, or subsequently. On the contrary, it appears distinctly that "the defendants," by which term the plaintiff in error and his partners are described throughout the case agreed, were still in Boston in September and October 1861 and in July and December 1863.

We are of opinion, therefore, that it sufficiently appears, from the case agreed, that the parties resided, during the war, in the states of Massachusetts and Virginia respectively.

But even if this were not so, it would not follow, as contended by the counsel for the defendants in error, that the judgment must be affirmed. The most that could be said would be, that it is left in doubt, by the language of the case agreed, whether the parties did or did not reside in those states respectively during the war, and, in that view, the case agreed ought to be set aside for uncertainty, and a *venire de novo* awarded: 1 Rob. (old) Pract. 372, 374.

Taking the facts, then, to be, that the debtors in this case resided, during the war, in the state of Massachusetts, and that

the creditors resided, during the same period, in the state of Virginia, the question presented for the decision of the court is, whether interest for that period can be recovered.

In the state of hostilities which existed from 1861 to 1865, between the United States, on the one hand, of which the state of Massachusetts was one, and the organization of states known as the Confederate States, on the other, of which the state of Virginia was one, the people of Massachusetts and Virginia were arrayed on opposite sides. The people of Virginia were, actually and legally, the enemies of the people of Massachusetts, and that such was the relation between them has been repeatedly recognised by the decisions of the Supreme Court. And so it has been repeatedly held by that court, that, for all the purposes of the present case, that conflict had all the incidents of a war, in the common acceptation of that term: *The Prize Cases*, 2 Black 635; *Mrs. Alexander's Cotton*, 2 Wallace 404; *The Venice*, 2 Id. 258.

During war, all commercial intercourse with the subjects or citizens of the enemy's country is prohibited by the general principles of public law, and in the late war, was expressly prohibited by the Act of Congress passed July 13th 1861, and the proclamation of the President, issued in pursuance thereof, on the 16th August 1861.

The prohibition of commercial intercourse, thus made by the general principles of public law, and by the Act of Congress, must be construed with reference to the objects in view, and must be held to embrace all acts, in the nature of commercial intercourse, which might have a tendency to strengthen the resources of the enemy. Thus, it is held, on general principles of law, that the remission of funds, in money or bills, to a subject of the enemy, is unlawful: 1 Kent 67. The payment of a debt to the creditor in person, would stand upon the same reason, and be equally unlawful; and it could make no difference whether such payment was made at the residence of the debtor, or at that of the creditor. In either case, the payment would contravene the policy of the United States and the provisions of the Act of Congress. We do not think, as argued by the counsel for the defendants in error, that Tucker, Whitin & Carere might and ought to have supposed, when they saw McGill in Boston, that he had abandoned his residence in the Confederate States, and

so might lawfully have made payment to him. They would not have been justified in coming to that conclusion, from the mere fact of his presence in Boston, without permanent residence there or elsewhere in the North, and without his having taken the oath of allegiance, which, by the established policy, would have been exacted as a test of his loyalty. And accordingly we find that they refused to pay, for a reason which plainly implied that the defendants in error still resided in Virginia.

We may, therefore, lay out of view the applications for payment made by McGill, as not affecting the question before us.

We have, then, the simple case of a debt due by citizens of Massachusetts to citizens of Virginia, which became payable in October 1861, and of a war in which the citizens of Virginia were enemies to the citizens of Massachusetts, and in which all commercial intercourse between them was not only unlawful on general principles, but expressly prohibited by Act of Congress.

That the remedy for the recovery of a debt in such a case is suspended during the existence of the war, and is revived upon its termination, is a well-established principle of public law. Whether, in a suit brought after the termination of the war, to recover such a debt, interest can be recovered for the period of the war, was a question much agitated in this country after the close of the Revolutionary War, and gave rise to numerous judicial decisions. The question was discussed in the Court of Appeals of Virginia in the case of *McCall* v. *Turner*, 1 Call 133, decided in 1797. Though the question appears not to have been directly presented for adjudication in that case, yet the decision was regarded as settling the question against the right to recover interest, as will appear from the case of *Brewer* v. *Hastie*, 3 Call 22, decided by the same court in 1801, where the very point was determined on the authority of *McCall* v. *Turner*, the court reversing a decree of Chancellor WYTHE, allowing the interest. The same question has been decided the same way by the Supreme Court of Pennsylvania, in *Hoare* v. *Allen*, 2 Dallas 102, and *Foxcraft* v. *Nagle*, 2 Dallas 132; by the courts of Maryland and South Carolina, in several cases collected in 1 Am. Lead. Cas. 518; by Mr. Justice WASHINGTON, of the Supreme Court of the United States, in *Conn et al.* v. *Penn et al.*, Peters's C. C. 496, decided in 1818; and, within the last few weeks, by Judge GILES, of the United States District Court for the District of Maryland,

in a case reported in the newspapers. We are not aware of any reported case which holds a contrary doctrine. The case of *Jones's Admrs.* v. *Hylton*, 3 Dallas 199, which is cited by the counsel for the defendants in error, as deciding that interest was recoverable during the war, is no authority for that doctrine. It appears from the report of that case that interest was allowed from the 7th day of July 1782, but it also appears that it was not allowed prior to that time, though the bond was dated on the 7th day of July 1774. It thus appears that interest was not allowed until eight years after the date of the bond, which was just the period of the war, but on what ground that was done cannot be ascertained from the reported case.[1] There does not appear, from the report, to have been any question as to interest before the Supreme Court. We are confirmed in our opinion that the question was not decided in that case by the declaration of Mr. Justice WASHINGTON in *Conn et al.* v. *Penn et al.*, that it had never, as he believed, been decided by the Supreme Court.

After such a concurrence of judicial opinion and authority, including at least one express decision of the Court of Appeals of Virginia, we do not feel disposed, if we felt at liberty, to examine the question as an original one, and do not think it necessary to explain the various grounds upon which the decisions referred to were placed. We may remark, however, in conclusion, that the general principles quoted by the counsel for the defendants in error were fully recognised at the time the cases above cited were decided. Thus, the remark of Judge PENDLETON quoted from the case of *Jones* v. *Williams*, 2 Call 102, that, "interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it," was made two years before the decision in *Brewer* v. *Hastie*, and the adage that interest follows the principal as the shadow does the body, was quoted by Lord HARDWICKE, as a familiar saying, in the Court of Chancery, as far back as 1749: *Beckford* v. *Tobet*, 1 Ves. Sr. 308.

Upon the whole, we are of opinion that interest during the war is not recoverable, and that the judgment should be reversed.

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[1] The explanation doubtless is, that the jury refused to allow interest during the war, though it appears that the Chief Justice, in his charge to the jury, expressed his opinion in favor of the right to interest. See the opinion of PENDLETON, J., in *McCall* v. *Turner*, 1 Call 146.